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MARY C. WICKHAM
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July 19, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**Re: Amendment to Title 2 – Administration of the Los Angeles County
Code, Local Small Business Enterprise Preference Program**

Dear Supervisors:

As directed by the Board of Supervisors at its meeting of July 12, 2016, enclosed please find an ordinance amending Title 2 – Administration of the Los Angeles County Code, relating to the Local Small Business Enterprise Program. The ordinance clarifies the administration and certification of the Program including increasing the preference from eight percent (8%) to fifteen percent (15%).

The analysis and ordinance may be presented to the Board of Supervisors for consideration.

Very truly yours,

MARY C. WICKHAM
County Counsel

By 

PATRICE J. SALSEDA
Principal Deputy County Counsel
Contracts Division

APPROVED AND RELEASED:



LESTER J. TOLNAI
Chief Deputy


PJS:cd
Enclosure

c: Brian J. Stiger, Director, Consumer Affairs

ANALYSIS

This ordinance amends Title 2 – Administration of the Los Angeles County Code, relating to the Local Small Business Enterprise Preference Program by amending and clarifying the administration and certification of the Local Small Business Enterprise Program, including increasing the preference from eight percent (8%) to fifteen percent (15%).

MARY C. WICKHAM
County Counsel

By 
PATRICE J. SALSEDA
Principal Deputy County Counsel
Contracts Division

PJS:cd

Requested	02/19/16
Revised	07/15/16

ORDINANCE NO. _____

An ordinance amending Title 2 - Administration of the Los Angeles County Code, relating to the Local Small Business Enterprise Preference Program.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.204.010 is hereby amended to read as follows:

2.204.010 Introduction.

The bBoard of sSupervisors finds that it is of benefit to the eCounty of Los Angeles to promote and facilitate the fullest possible participation by all citizens in the affairs of the eCounty in every way possible. It is also essential that opportunities be provided for full participation in our free enterprise system by small business enterprises. Further, it is the policy of the bBoard that the eCounty should aid and assist, to the maximum extent possible, the interests of local small business concerns in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for purchase of goods or services for the eCounty be placed with such enterprises.

SECTION 2. Section 2.204.020 is hereby amended to read as follows:

2.204.020 Purpose.

The eCounty of Los Angeles lLocal sSmall bBusiness eEnterprise pPreference pProgram is a race and gender-neutral program designed to enhance purchasing and contracting opportunities for local small businesses within the eCounty of Los Angeles. The program priorities were developed to promote and foster inclusiveness and economic development, as well as ongoing evaluation to assure all businesses,

including local small businesses, are provided equal opportunities in eCounty purchasing and contracting activities.

SECTION 3. Section 2.204.030 is hereby amended to read as follows:

2.204.030 Definitions.

For the purpose of this eChapter, the following words and phrases are defined and shall be construed as having the following meaning:

A. "County" shall mean the eCounty of Los Angeles or any public entities for which the bBoard of sSupervisors is the governing body.

B. "Department" shall mean the eCounty department, entity, or organization responsible for the solicitation.

C. "Local sSmall bBusiness eEnterprise" or "LSBE" shall mean:

1. A business which is certified by the State of California as a small business and has had its principal officeplace of business located in Los Angeles County for at least one (1) year; or

2. In federally funded County solicitations subject to the federal restriction on geographical preferences, a business which is certified as small by the SBAfederal Small Business Administration or which is registered as small on the federal Central Contractor RegistrationSystem for Award Management ("SAM") data base; or

3. A business certified as a small business enterprise with other certifying agencies pursuant to the Department of Consumer and Business Affairs ("DCBA") inclusion policy that (a) has its principal place of business located

in Los Angeles County and (b) has revenues and employee sizes that meet the State's Department of General Services requirements.

4. In addition, the standards shall provide that the LSBE shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(a) A LSBE is deemed to perform a commercially useful function if the business does all of the following:

(i) Is responsible for the execution of a distinct element of the work of the contract;

(ii) Carries out its obligation by actually performing, managing, or supervising the work involved;

(iii) Performs work that is normal for its business services and functions;

(iv) Is responsible with respect to products, inventories, materials, supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing if applicable, and making payment; and

(v) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(b) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a LSBE.

D. "SBA" shall mean the federal Small Business Administration.

E. "Solicitation" shall mean the eCounty's process to obtain bids or proposals for goods and services.

SECTION 4. Section 2.204.040 is hereby amended to read as follows:

2.204.040 Administration.

~~The Internal Services Department (ISD)~~DCBA, with the assistance of County Counsel and the Internal Services Department ("ISD"), is authorized and shall issue interpretations of the provisions of this eChapter, and shall issue written instructions on the implementation and ongoing administration of this eChapter. Such instructions may provide for the delegation of functions to other departments.

SECTION 5. Section 2.204.050 is hereby amended to read as follows:

2.204.050 Certification as a local small business enterprise.

~~The Department of Consumer and Business Affairs~~DCBA shall be responsible for verifying that a local small business is already certified as a small business by the State of California and that the business or other certifying entity pursuant to DCBA's inclusion policy (a) has its principal office~~place of business~~ located in Los Angeles County- and (b) has revenues and employee sizes that meet the State's Department of General Services requirements. ~~The Department of Consumer and Business Affairs~~DCBA shall certify ~~local small business enterprises~~LSBEs and maintain records of the certified businesses and their participation in County purchasing and contracting.

SECTION 6. Section 2.204.051 is hereby amended to read as follows:

2.204.051 Certification as a Local sSmall bBusiness eEnterprise in eCertain fFederally fFunded eCounty sSolicitations.

Where geographic preferences are precluded by federal funding restrictions, ~~County departments~~DCBA shall be responsible for verifying that a ~~small business enterprise is certified by the SBA or is registered as small on the federal Central Contractor Registration data base~~LSBE meets the federal small business criteria for the number of employees and/or revenue and maintains an active registration as a small business in the SAM data base.

SECTION 7. Section 2.204.060 is hereby amended to read as follows:

2.204.060 Responsibilities and sStandards.

A. ~~In order t~~To facilitate the participation of ~~local small business enterprises~~LSBEs in County purchases of goods and services, County departments shall provide for ~~local small business enterprise~~LSBE preference in their purchase of goods and services where responsibility and quality are equal.

B. In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, subject to subsections D through G, the preference to the ~~local small business enterprise~~LSBE shall be ~~eight~~fifteen percent (~~8~~15%) of the lowest responsible bidder meeting specifications, determined according to the instructions issued by ~~ISD~~DCBA.

C. In solicitations where an award is to be made to the highest scored proposer based on evaluation factors in addition to cost/price, subject to subsections D

through G, the preference to the ~~local small business enterprise~~LSBE shall be ~~eight~~fifteen percent (~~8~~15%) of the cost/price component of the evaluation method, determined according to the instructions issued by ~~ISDDCBA~~.

D. The ~~local small business enterprise~~LSBE preference under subsections B and C of this section shall not exceed one-hundred and fifty thousand dollars (\$150,000.00) for any one (1) solicitation and award determination.

E. In order for a ~~local small business enterprise~~LSBE to be eligible to claim the preference, the business must request the preference in the solicitation response.

F. When an applicable statute limits the preference to the ~~local small business enterprise~~LSBE at ~~five percent (5%) or some other an~~ amount less than ~~eight~~fifteen percent (~~8~~15%), the applicable statute shall determine the preference amount.

G. In no case shall the Local Small Business Enterprise Preference Program price, or scoring preference be combined with any other County preference program to exceed fifteen percent (15%) of the lowest responsible bid meeting specifications.

SECTION 8. Section 2.204.070 is hereby amended to read as follows:

2.204.070 Exclusions.

The ~~l~~L~~o~~o~~c~~a~~l~~ ~~s~~s~~m~~a~~l~~l ~~b~~b~~u~~s~~i~~s~~n~~e~~s~~ ~~e~~e~~n~~t~~r~~e~~p~~~~r~~ise ~~p~~p~~r~~e~~fe~~rence Program shall not be given for the following ~~e~~C~~o~~u~~n~~ty purchases:~~~~

A. National contracts established for the purchase of equipment and supplies for and by the National Association of Counties, U.S. Communities Government Purchasing Alliance, or any similar or related group purchasing organization.

B. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.404.6.0 or a successor provision.

C. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy Manual, Section P-2810 or a successor provision.

D. A non-agreement purchase with a value of less than five thousand dollars (\$5,000.00) pursuant to the Los Angeles County Purchasing Policy Manual, Section A-03000 or a successor provision.

E. Any contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by the federal government, including those relating to participation in a contract by a minority or women business enterprise, as a condition of the receipt of the federal funds.

F. A contract for which federal, State, or local laws limit or prohibit application of Local Small Business Enterprise Preference Program.

SECTION 9. Section 2.204.090 is hereby amended to read as follows:

2.204.080 Violations and Sanctions.

A. The information furnished by each ~~solicitation respondent~~business requesting a ~~l~~Local ~~s~~Small ~~b~~Business ~~e~~Enterprise ~~p~~Preference Program shall be under penalty of perjury.

B. No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a ~~local-small business enterprise~~LSBE for the purpose of this ~~e~~Chapter.

C. No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a ~~local small business enterprise~~LSBE.

D. A business which has obtained certification as a ~~local small business enterprise~~LSBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a contract to which it would not otherwise have been entitled, shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;

2. In addition to the amount described in subdivision 1 of subsection D of this Section, be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the contract involved; and

3. Be subject to the provisions of Chapter 2.202 of the County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

E. The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the State, ~~Department of Consumer and Business Affairs~~ and ISDDCBA of this information prior to responding to a solicitation or accepting a contract award.

SECTION 10. Section 2.204.090 is hereby amended to read as follows:

2.204.090 ~~Appeals for reconsideration of local small business enterprise certification.~~Review of Program Eligibility.

The ~~Department of Consumer and Business Affairs will~~DCBA is authorized to investigate any valid complaint of eligibility received by the County concerning the ~~Local Small Business Enterprise Preference Program.~~

SECTION 11. Section 2.204.100 is hereby amended to read as follows:

2.204.100 Applicability.

This ~~e~~Chapter shall apply to all solicitations issued ~~sixty (960)~~ days after the effective date of the ~~e~~Ordinance codified in this ~~e~~Chapter.

[2204010PSCC]